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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/666,184

09/21/2000

Kyoko Matsumoto

TAK-140-USAP

9127

28892 7590 07/20/2007  
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EXAMINER
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MORGAN, ROBERT W

ART UNIT	PAPER NUMBER
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3626

MAIL DATE	DELIVERY MODE
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07/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/666,184	<b>Applicant(s)</b> MATSUMOTO ET AL.	
	<b>Examiner</b> Carolyn M. Bleck	<b>Art Unit</b> 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2005 and 21 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/27/06 &amp; 12/15/06</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Notice to Applicant***

1. This communication is in response to the amendment filed on 24 June 2005.

Claims 1-8 are pending. Claim 1 has been amended.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: a step relating to performing enquiries among a plurality of different races of people, the resulting opinions being analyzed, and *the analysis showing that the average face was not an average face*. There is no step or mechanism relating to feedback based on the resulting opinions. Is the average face updated if the opinions show that it is not in fact an average face? The average face that is generated in step 1 of claim 1 will have to be modified if the resulting opinions

find that it is not an accurate depiction of an average face. Thus, claim 1 appears to be missing this essential step or mechanism for feedback in claim 1.

Further, claim 1 fails to recite any steps indicating how the analysis result is used to generate color maps and image maps of the plurality of races. What analysis is performed on this data to lead to the generation of a color map or image map? Based on the limitation in claim 1, the "analysis result" somehow leads to a color map and image map for a plurality of races, yet Applicant fails to indicate how this "analysis result" actually produces a color map or image map. Because claim 1 fails to address these missing essential steps, claim 1 is rejected under 35 U.S.C. 112, second paragraph.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

(A) Claim 1 fails to comply with the subject matter eligibility requirements of 35 U.S.C. § 101 because claim 1 fails to produce a tangible result. To comply with the subject matter eligibility requirement of 35 U.S.C. § 101, a claimed invention must have either a practical application by physical transformation or a practical application that produces a useful, tangible, and concrete result.

Applicant's invention does not transform an article or physical object to a different state or thing. Thus, the Examiner must consider whether the claimed invention produces a practical application that produces a useful, tangible, and concrete result. Here, the Examiner has focused on the result of the claimed invention which is found in the last step of the claim 1. In this case, claim 1 recites the step of "selecting suitable eye shadow and/or rouge cosmetics based upon said color information." However, claim 1 does not accomplish a practical application or to provide "real world" value or result. The claim does not recite any steps beyond selecting eye shadow and/or rouge. The selection of eye shadow and/or rouge is not a real world result. The Examiner suggests that a real world result would include a step of reporting or displaying the selection of eye shadow or rouge. Thus, the Examiner respectfully submits that Applicant's claimed invention does not appear to provide a useful, concrete, and tangible result, and the fails to comply with 35 U.S.C. § 101.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied prior art teaches colouration issues in computer generated facial animation (Patel), MEDUSA – A Facial Modeling and Animation System (Haber), and Computer-Based Facial Expression Models and Image Databases (Parke).

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (571) 272-6767. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (571) 272-6776.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(571) 273-8300 [Official communications]

(571) 273-8300 [After Final communications labeled "Box AF"]

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(571) 273-6767 [Informal/ Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to the Knox Building, Alexandria, VA.

*Carolyn Bleck*

**Carolyn M. Bleck  
Patent Examiner  
Art Unit 3626**

**2/13/07**